APPEAL NO. 93166

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 through 11.10 (Vernon Supp. 1993). On February 8, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He determined that the appellant (claimant) had reached maximum medical improvement (MMI) 20 months after his back injury with no impairment rating, as found by the designated doctor. Claimant appeals stating that he still has pain and asserting that he has not reached MMI. The respondent (carrier) states that the evidence is sufficient to support the hearing officer.

DECISION

Finding that the decision and order are supported by sufficient evidence of record, we affirm.

Claimant worked for a construction contractor as a sheet rock laborer when he hurt his back. He was carrying a moderate amount of weight when he stooped to go under a barrier and felt pain in his low back as he straightened. The benefit review conference officer entered an interlocutory order for payment of benefits through the date the designated doctor found MMI. The issues before the hearing were whether claimant had reached MMI and, if he had, what was the impairment rating.

The injury is reported to have occurred on (date of injury). The doctor who performed an ordered medical evaluation on behalf of the carrier, (Dr. W), found MMI on February 3, 1992, with no impairment. His report was thorough. Claimant, through his attorney, in July 1992, requested that the Commission provide a doctor to determine MMI. The record reflects that the hearing officer elicited information from the parties concerning the request for and selection of the designated doctor; the Commission selected and appointed (Dr. V). Therefore both his opinion as to MMI and impairment rating are to be evaluated under the criteria of presumptive weight as found in Article 8308-4.25(b) and 4.26(g) of the 1989 Act. He initially found MMI on October 15, 1992, with no impairment rating. Dr. V then provided another report which said MMI wasreached on November 9, 1992, with no impairment. Claimant's treating doctor, (Dr. H), has not found MMI and sought to perform surgery. A second opinion as to surgery by (Dr. M) did not recommend surgery. There is some difference in interpretation of some studies done in regard to claimant's back, but the CT scans, MRI, and discograms, at most reflect opinions that a disc bulge encroaches on the front of a nerve passage at the L4-5 level of the spine, that the claimant has a small spinal canal at that level, and that there is some hypertrophy at the L5-S1 level. An MRI, CT scan, and discogram, all done in 1991 after the injury, reflect normal results or within satisfactory limits. There was some controversy as to why claimant was not allowed to complete a program at a rehabilitation center; whether the carrier cut off the money or whether claimant was not exerting enough effort to warrant continuation.

The designated doctor, Dr. V, at the conclusion of his first report indicating MMI in

October 1992, recommended a pain management and rehabilitative reconditioning program. Claimant's attorney then asked if upon completion of such a program, claimant would then reach MMI. Dr. V replied in the affirmative. Carrier then questioned Dr. V and he reported MMI on November 9, 1992, pointing out that from a physical standpoint, the claimant had reached MMI.

The hearing officer is the sole judge of the weight and credibility of the evidence. Article 8308-6.34(e) of the 1989 Act. Article 8308-4.25 and 4.26 state that the opinion of the designated doctor selected by the Commission will be given presumptive weight as to MMI and impairment rating unless the great weight of the other medical evidence is to the contrary. In Texas Workers' Compensation Commission Appeal No. 92412, dated September 28, 1992, the Appeals Panel stressed that the designated doctor's report, by statute, is accorded significance and that more than a mere balancing of the evidence must take place in order to override its declarations.

In Texas Workers' Compensation Commission Appeal No 92441, dated October 8, 1992, the Appeals Panel allowed a designated doctor to amend his report. The hearing officer's opinion shows that he considered the designated doctor's initial offering, his noted changes, and his last opinion as to when MMI was reached. In considering these as a whole to determine what the designated doctor had determined as to MMI and impairment, the hearing officer's action was consistent with Texas Workers' Compensation Commission Appeal No. 92469, dated October 15, 1992, Texas Workers' Compensation Commission Appeal No. 92441, dated October 8, 1992, and Texas Workers' Compensation Commission Appeal No. 92617, dated January 14, 1993. The hearing officer's decision that Dr. V found MMI on November 9, 1992, with no impairment rating and that the great weight of other medical evidence was not to the contrary is supported by sufficient evidence of record. As stated, the report of Dr. W was authoritative and found MMI even earlier with no impairment. Claimant's treating doctor does not believe MMI has been reached, but his recommendation for surgery was opposed by the second opinion doctor, Dr. M.

Claimant also asserts that he is still in pain. As pointed out in Texas Workers' Compensation Commission Appeal No. 92394, dated September 17, 1992, MMI does not mean that in every case the claimant will be free of pain. *Compare* that to Texas Workers' Compensation Commission Appeal No. 93119, dated March 29, 1993, where an injury caused nerve damage, restricted function, and surgery was necessary; MMI was delayed in that instance. But, MMI in many cases does not mean that the claimant has made a complete recovery. *See* Texas Workers' Compensation Commission Appeal No. 92670, dated February 1, 1993. The hearing officer was not precluded from determining that MMI had been reached because of claimant's assertions of continued pain.

The Appeals Panel will not reverse the decision of the hearing officer on a factual determination unless it is against the great weight and preponderance of the evidence. *See* Mueller v. Charter Oak Medical Center, 533 S.W.2d 123 (Tex. Civ. App.-Tyler 1976, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 92232, dated July 20, 1992. The decision and order are affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Robert W. Potts
Appeals Judge